

## **REMARKS**

Reconsideration of the above-identified application is respectfully requested.

In the Office Action, the Examiner kindly noted that the drawings had been approved by the official draftsperson. Applicant kindly thanks the Examiner for relaying this notice.

Attached is a substitute specification that makes several amendments to the specification. Several minor typographical corrections have been made along with certain other amendments that shall be discussed in more detail below. Additionally, "Table A" in the specification has been changed to "Table 1" in response to the objection to the specification raised by the Examiner. No new matter has been added as a result of these amendments.

The present application is a continuation of U.S. Application No. 09/993,409. Applicants herewith enclose a revised Plant Patent Declaration and Power of Attorney as requested by the Examiner. Entry of this Plant Patent Declaration and Power of Attorney is respectfully requested.

### 35 U.S.C. Section 102(b)/Requirement for Information Under 37 C.F.R. Section 1.105

The Examiner has requested that the Applicant and the assignee of the above-identified application provide certain information under 37 CFR Section 1.105.

The inventor, Andre Smaal, has represented to the licensee of the above-identified application who has represented to the undersigned attorney, that plants of the Kalanchoe variety named 'Patty' were first introduced for sale in Europe after December 18, 2000.

Applicant would also like to advise the Examiner that the inventor, Andre Smaal, has represented to the licensee of the above-identified application, who has represented to the undersigned attorney, that plants of the Kalanchoe variety named 'Patty' were shown publicly at an internal trial conducted in June 2001 at Blommendale nursery in the Netherlands. The purpose of the trial was to compare 'Patty' with existing varieties. Customers and colleagues are believed to have attended the trials, but only to provide their opinion about 'Patty' and other new varieties being shown at the time. 'Patty' was identified by a number, not its variety name, no cuttings were sold or given away, no prices given, no orders taken, no plants were sold or given away and no written information was provided. After the trials, all plants were destroyed.

Applicant would also like to advise the Examiner that a Plant Breeder's Rights application for the Kalanchoe variety named 'Patty' was filed in the Netherlands on May 6, 1999 and the application number is KLN283 and it was published on May 25, 2000. An European Plant Breeders Rights application was also filed for this variety on May 10, 2000 and the application number is 20000741. A Canadian Plant Breeders Rights application was filed for this variety on January 16, 2001 and the application number is 01-2520. Applicant herewith encloses documents from the Netherlands relating to the Dutch PBR application for the Kalanchoe variety named 'Patty' indicating that this variety was accepted on May 15, 2001 (The Examiner will note that these documents are in Dutch). The Examiner is requested to contact the undersigned attorney if she has any questions whatsoever regarding this variety or has any additional questions.

Objection to the Disclosure

The disclosure is objected to under 37 C.F.R. Section 1.163(a) and under 35 U.S.C. Section 112, first paragraph, as providing less than a full, clear and complete botanical description of the plant and the characteristics that define the plant *per se* and which distinguish the plant from related known cultivars and antecedents. More specifically, the Examiner raised the following objections:

- A. The Examiner stated that the Applicant should be more descriptive with the comparison of the seed parent, '95013' and the observed plant 'Patty'.
- B. The Examiner stated that the specification does not "particularly point out where the variety of plant has been asexually reproduced."
- C. The Examiner stated that Applicant should disclose the internode length.
- D. The Examiner stated that Applicant should disclose the petiole diameter.
- E. The Examiner requested that "Table A" be placed before the claim page.

In response to the above-identified objections raised by the Examiner, Applicant herewith encloses a substitute specification. In this substitute specification, amendments have been made to address each of the above objections. Applicant submits that the amendments to the substitute specification do not involve any new matter.

In view of these amendments to the disclosure, Applicant submits that the objection under 37 C.F.R. Section 1.163(a) and 35 U.S.C. Section 112, first paragraph, should be withdrawn.

Claim Rejection

Claim 1 is rejected under 35 U.S.C. Section 112, first and second paragraphs, as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section.

Applicant herewith incorporates by reference the arguments made above. Therefore, in view of the above described amendments to the disclosure, Applicant submits that this rejection should now be withdrawn.

**CONCLUSION**

Applicant submits that the claim is now in condition for allowance.

Should the Examiner have any questions concerning the above, he/she is respectfully requested to contact the undersigned at the telephone number listed below. If the Examiner notes any further matters which the Examiner believes may be expedited by a telephone interview, the Examiner is requested to contact the undersigned.

If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account no. 23-0785.

Respectfully submitted,

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